ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION III

CACR 06-134

JANUARY 17, 2007

CEDRIC LEWIS MORGAN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SEVENTH DIVISION
[NO. CR2004-4589]

HONORABLE BARRY ALAN SIMS, JUDGE

AFFIRMED

Appellant Cedric Lewis Morgan was convicted of rape in a Pulaski County Circuit Court bench trial. He was sentenced to forty years in prison for this crime, and his counsel filed a timely notice of appeal from the judgment of conviction.

Appellant's counsel has filed a motion to be relieved and a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Ark. Sup. Ct. R. 4-3(j) (2006), asserting that the appeal is wholly without merit. Appellant was served with his counsel's motion and brief. Appellant has not filed points for reversal in this matter. The State cites Ark. Sup. Ct. R. 4-3(j)(3) as grounds for its decision not to file an appellee's brief. After an examination of this appeal under the proper standards, we affirm appellant's conviction and grant counsel's motion to be relieved.

There were two adverse rulings in this bench trial: (1) denial of the motions for directed verdict, and (2) overruling of a relevancy objection. Neither ruling could be the basis for a meritorious appeal.

As to the denial of the motions for a directed verdict, this is the means by which a defendant challenges the sufficiency of the evidence. *Cluck v. State*, ___ Ark. ___, ___ S.W.3d ___ (Feb. 6, 2006). In reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State and consider only the evidence that supports the verdict. *Id*. We affirm a conviction if substantial evidence exists to support it. *Id*. Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id*. With regard to a rape conviction, the testimony of a rape victim, standing by itself, constitutes sufficient evidence to support a conviction. *See*, *e.g.*, *Hanlin v. State*, 356 Ark. 516, 157 S.W.3d 181 (2004). Appellant moved for directed verdict, asserting that the State had not proved that he in fact had sexual intercourse with the victim, B.T. (the daughter of his then live-in girlfriend).

We hold that there was such sufficient evidence and that no non-frivolous argument could be asserted on appeal regarding this adverse ruling. B.T. testified that appellant would drive her mother to work each day and come back to the house where B.T. was. There was usually about half an hour before it would be time for appellant to drive B.T. to middle school. B.T. said that during that time, he would approach her and have sex with her by

inserting his penis in her vagina. She said when she was not yet awake, he would climb into her bed for sex. Other times, if she was already dressed for school, he would instruct her to undress and have sex with her. B.T. said these events happened between her sixth and eighth grade years, two to three times per week, when she was age eleven to thirteen. B.T. did not tell her mother until confronted directly with a question of whether appellant had touched her inappropriately.

A physician testified that B.T. had physical findings consistent with a female who had engaged in sexual intercourse, although the examination was far too long after the fact for a determination of actual injury or presence of seminal fluid. B.T.'s mother testified about appellant living with her and B.T., and about their transportation arrangements, in line with B.T.'s testimony. B.T.'s mother also testified about how she came to know about the rapes, although she never witnessed any of the sexual interludes between appellant and B.T.

Appellant's counsel moved for directed verdict, arguing that there was insufficient evidence to show beyond a reasonable doubt that appellant had sexual intercourse or deviate sexual activity with B.T. He did not challenge any particular element of the offense, but only that he did not engage in any such unlawful activity with B.T. This motion was denied, and it was renewed at the proper time, resulting in another denial of the motion. The judge found that the State had proved its case beyond a reasonable doubt.

There is no non-frivolous argument to be made on appeal. Evidence from a witness who testifies to what he or she saw, heard, or experienced is direct evidence. *See Mills v.*

State, 351 Ark. 523, 95 S.W.3d 796 (2003). With regard to a rape conviction, the testimony of a rape victim, standing by itself, constitutes sufficient evidence to support a conviction. *Id. See also Laughlin v. State*, 316 Ark. 489, 872 S.W.2d 848 (1994). We review a challenge to the sufficiency of the evidence in the light most favorable to the State, and when we consider the unequivocal testimony of B.T. that she was repeatedly raped over the course of at least two years, we have no hesitancy holding that any appeal of this single rape conviction would be wholly frivolous. *Compare Cromeans v. State*, __ Ark. __, __ S.W.3d __ (May 8, 2003).

The other adverse ruling was the overruling of a relevancy objection. This came about during the prosecutor's questioning of B.T. when she testified about one particular drive to school. B.T. said that appellant told her that if she was able to convince another of her friends to have sex with him, then he would allow her to try out for the drill team. Defense counsel objected that this was irrelevant to the present rape trial. The trial court overruled the objection.

Arkansas Rule of Evidence 401 states "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Arkansas Rule of Evidence 402 states "all relevant evidence is admissible, except as otherwise provided by statute or by these rules or by other rules applicable in the courts of this State. Evidence which is not relevant is not admissible." *Id.* A ruling on the relevancy

of evidence is subject to an abuse-of-discretion standard. *Easter v. State*, 306 Ark. 615, 816 S.W.2d 602 (1991). More important here, when the evidence of guilt is overwhelming and the error is slight, we can declare that the error was harmless and affirm. *Johnson v. State*, 337 Ark. 477, 989 S.W.2d 525 (1999); *see also Criddle v. State*, 338 Ark. 744, 1 S.W.3d 436 (1999); *Barr v. State*, 336 Ark. 220, 984 S.W.2d 792 (1999); *Greene v. State*, 317 Ark. 350, 878 S.W.2d 384 (1994).

While it may be said that this particular question and answer had little or nothing to do with the accusation of rape as pertained to B.T., we can perceive no prejudice where there was more than sufficient evidence to support the conviction for one count of rape. *See Russell v. State*, 289 Ark. 533, 712 S.W.2d 916 (1986).

We affirm the conviction and grant counsel's motion to be relieved.

PITTMAN, C.J., and GLADWIN, J., agree.